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this Memorandum Decision shall not be  
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case.

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**IN THE  
COURT OF APPEALS OF INDIANA**

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LEONARD F. OWENS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0612-CR-1145
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Richard Sallee, Senior Judge  
Cause No. 49G01-0504-FB-60005

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**August 24, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Leonard F. Owens was convicted of Robbery,<sup>1</sup> a class A felony, and Carrying a Handgun Without a License,<sup>2</sup> a class A misdemeanor. Owens presents a single issue for review: Was the evidence sufficient to sustain the conviction of robbery as a class A felony?

We affirm.

The facts favorable to the conviction are that Napoleon Williams was driving his car on March 5, 2005, when he saw a car parked on the side of the road with its emergency flashers activated. Williams stopped and offered to drive the apparently stranded motorist to the nearest service station. Williams later identified that motorist as Owens. Owens, who identified himself to Williams as “Tu-tu”, accepted the offer and climbed into the front passenger seat of Williams’s vehicle. After the two had driven a short distance, Owens produced a gun, pointed it at Williams, and ordered Williams to pull over. He also said something to the effect of “Just give me what you got.” *Transcript* at 14. Williams stopped the vehicle and began struggling with Owen. During the struggle, Williams was shot in the leg. After the shot was fired, both men exited the vehicle and Williams fled into a field. After waiting long enough to assure that his assailant had left the scene, Williams returned to his vehicle, where he discovered that his

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<sup>1</sup> Ind. Code Ann. § 35-42-5-1 (West, PREMISE through 2007 Public Laws, approved and effective through April 8, 2007).

<sup>2</sup> Ind. Code Ann. § 35-47-2-1 (West, PREMISE through 2007 Public Laws, approved and effective through April 8, 2007).

cell phone was missing. Williams drove to a hospital for treatment. Upon arrival, he reported what had occurred and police were summoned.

Detective Andre Smith of the Indianapolis Police Department traveled to the hospital and interviewed Williams. The information that Williams provided enabled Detective Smith, approximately eleven days later, to identify Owens as a suspect and to develop a photo array that included Owens's photo. When he viewed the array, Williams immediately identified Owens as the man who had shot him.

Owens was charged with two counts of robbery, one as a class A felony and one as a class B felony, battery as a class C felony, and carrying a handgun without a license as a class A misdemeanor. He was found guilty of all counts following a bench trial, and convictions were entered on the class A robbery charge and the weapons charge. Owens challenges the sufficiency of the evidence supporting the robbery conviction. Essentially, he admits that he fired the shot that wounded Williams, but claims it was accidental, and also offers a completely different version of the events of that incident.

When considering a challenge to the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). This review “respects ‘the [fact-finder]’s exclusive province to weigh conflicting evidence.” *Id.* at 126 (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)). Considering only the probative evidence and reasonable inferences supporting the judgment, we must affirm “‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of

fact to find the defendant guilty beyond a reasonable doubt.’” *McHenry v. State*, 820 N.E.2d at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

Owens claims Williams’s account of the incident is inherently unbelievable and seeks therefore to invoke the incredible dubiousity rule. “Within the narrow limits of the ‘incredible dubiousity’ rule, a court may impinge upon a jury’s function to judge the credibility of a witness.” *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). For testimony to be disregarded based on a finding of “incredible dubiousity,” it must be inherently contradictory, wholly equivocal, or the result of coercion. *Love v. State*, 761 N.E.2d 806. Moreover, there must also be a complete lack of circumstantial evidence of the defendant’s guilt. *Id.* This rule is rarely applicable. *Id.*

We find that the incredible dubiousity rule does not apply here. First, there was not a complete lack of circumstantial evidence. Among other things, Owens’s fingerprint was lifted from the door of Williams’s car shortly after the incident. Moreover, Williams’s testimony was not inherently unbelievable. Owens’s claim to the contrary rests upon the difference between Williams’s and Owens’s respective versions of the events in question. Williams’s version is consistent with the account of the incident set out previously in this opinion. Owens, on the other hand, testified that he and Williams knew each other, and that the physical struggle that erupted between them started because Williams initiated an unwelcome sexual advance. In the struggle that followed, Owens admitted that his gun discharged, striking Williams, but claimed that the gun fired accidentally. In support of his version, Owens pointed to testimony on Detective Smith’s

part to the effect that the detective was skeptical of Williams's claim that he (Williams) did not know Owens at the time of the shooting. In fact, our review of that portion of the transcript reveals that Detective Smith was far from adamant on that subject. Moreover, even if Williams did know Owens, it does not necessarily absolve Owens of criminal liability on these charges.

The incredible dubiousity rule does not apply here, and Williams's testimony, along with the circumstantial evidence mentioned above, was sufficient to sustain the convictions.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.